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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,676	05/09/2002	Brash George Kenneth	72371	6912
22242	7590	10/28/2003	EXAMINER	
FITCH EVEN TABIN AND FLANNERY 120 SOUTH LA SALLE STREET SUITE 1600 CHICAGO, IL 60603-3406			SHERRER, CURTIS EDWARD	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 10/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/980,676

Applicant(s)

KENNETH, BRASH GEORGE

Examiner

Curtis E. Sherrer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/19/01.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has amended the claims to recite, in claim 1, "a first conventional shipping container," in claim 2, "a second shipping container" and in claim 16, "a pair of first shipping containers."

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 13 are indefinite because the scope of the phrases "conventional shipping container" and "substantially all of the fumigant" is unknown.

Claims 10 and 19 are indefinite because the scope of the phrase "upper part" is unknown.

Claims 11 and 20 are indefinite because the scope of the phrases "small diameter" and "appropriate systems" is unknown.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-4, 7-9, 11-14, 16-18 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Smithyman *et al.* (U.S. Pat. No. 6,047,497) ("Smithyman").

Smithyman teaches a fumigation method and system whereby storage areas such as compartments on a vehicle, such as compartments on a truck or a railroad car, where food

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products or agricultural crops such as grain are stored, are fumigated with a non-flammable mixture of gas. (Col. 4, lines 15-68). The gas mixing system is mounted on a wheeled chassis, such as a trailer, or on a vehicle, such as an automobile, a boat or a rail road car so that the gas mix system may be transported to differently locations and connected to regions requiring fumigation, or mounted on a vehicle and supplies gaseous mixture to a region located on the vehicle itself. (Col. 6, lines 20-46).

The system contains controllers and sensors. The system incorporates a common feed passage, a common exhaust passage, and branch inlet passages in direct fluid contact with the treated containers. *Id.* While the patented method discloses venting the gas mixture to the environment after its use is fulfilled, vent 66 can communicate via a scrubber or filter 68 for removing potentially dangerous gases, such as phosphine. (Col. 7, lines 26-34).

A vaporizer is included to heat the inert substance, such as CO₂ or nitrogen and thereby change its phase form a liquid to a gas. (Col. 5, lines 22-35). This reads on a heating source.

All connections would inherently be detachable as the treatment chamber and fumigation vehicle are separate entities.

Figure 1, shows several (which would include a pair) of containers being connected to the fumigation apparatus.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6, 10, 15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smithyman in view of Blatchford (Australian Pat. No. 32801/95).

Smithyman teaches that set forth above but does not teach the use of a scrubber that contains activated carbon and the washing of said scrubber. Further, Smithyman does not teach the placement of the fumigant inlet dispersion pipe system in the upper part of the fumigant system. Lastly, Smithyman does not teach the use of a sliding floor or bed to aid in the loading and unloading of produce to be fumigated.

Blatchford teaches fumigation methods whereby charcoal activated in silver nitrate solution is used as an ad- or absorber of phosphine gas that is regenerative. (Page 13, middle and page 17, lower). It would have been obvious to those of ordinary skill in the art to use the activated carbon of Blatchford in the process of Smithyman because it is commonly used as a phosphine, adsorbing agent. It would also have been obvious to those of ordinary skill in the art to regenerate the absorbent by washing, as this is a notoriously well known method of regenerating absorbents.

With regard to the placement of the fumigant inlet dispersion pipe system in the upper part of the fumigant system, it would have been obvious to those of ordinary skill in the art to place the dispersion pipe system in an upper part of the fumigant system as phosphine is a heavier than air gas and those in the art would want the gas to flow down onto the produce.

Lastly, with regard to the use of a sliding floor or bed to aid in the loading and unloading of produce to be fumigated, it would have been obvious to those of ordinary skill in the art to use

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such means for moving the produce of Smithyman because such means are notoriously well known for saving labor costs.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis E. Sherrer whose telephone number is 703-308-3847. The examiner can normally be reached on Tuesday-Friday, 8AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

A handwritten signature in cursive script, appearing to read 'Curtis E. Sherrer', followed by a horizontal line.

Curtis E. Sherrer, Esq.
Primary Examiner